IN THE HIGH COURT OFJUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
LETTERS PATENT APPEAL NO.249 OF 2006
IN
CIVIL WRIT PETITION NO.5713 OF 2006

1. Anand Yeshwant Deokar .. Appellant

vs

The State of Maharashtra & ors...Respondents

Mr.P.K.Dhakephalkar , Sr.Advocate with Mr.H.S.Anand for Appellant

Mr.V.V.Tulzapurkar ,Sr.Advocate with Mr.S.V.Kadam for Respondent no.5

Mr.H.V.Walawalkar Sr.Advocate for Respondent no.2
Mr.G.D.Utangale i/b M/s Utangale & Co for Respondent no. 3.
Ms. P.S.Cardozo AGP for Respondent no.1

CORAM : D.G.DESHPANDE AND
SMT ROSHAN .S.DALVI, JJ
DATE: 29th November, 2006

JUDGMENT (Per Smt R.S.Dalvi , J)

1. This appeal challenges the order of the learned Single Judge passed in the above Writ Petition on 25th September, 2006 dismissing the Writ Petition which challenged the appeal filed before the Slum Tribunal under the Maharashtra Slum Areas

(Improvement, Clearance, and Redevelopment Act, 1971. (the said Act)

2. A notification of declaration duly gazetted came to be issued on 1st January, 2004 declaring the inter alia lands claimed by the petitioner as slum. The petitioner sought to challenge the said notification by an appeal filed in July, 2006, 2 ½ years after the notification came to be issued. The appeal being grossly delayed, the petitioner took out an application for condonation of delay before the appellate Tribunal constituted under the said Act. This application was seriously challenged by the respondents showing that there was no sufficient cause for condonation of delay. Upon hearing the parties, the said application came to be dismissed. That order has essentially been challenged in the Writ Petition. The Writ Petition having been dismissed, the said order has been challenged in this appeal.

3. It is contended on behalf of the respondents

by way of preliminary objection that this appeal is not maintainable as L.P.A. because the impugned order was passed by the High Court in its power of superintendence over the Appellate Tribunal under the said Act. An appeal from such an order intra court is specifically excepted under clause 15 of the Letters Patent establishing this Court.

4. It is contended on behalf of the appellant that the appellant had in essence challenged the notification of the declaration dated 1st January, 2004 in the said appeal. The appeal itself came to be dismissed along with the application for condonation of delay. Consequently, the Writ Petition filed therefrom challenged the order on the application for condonation of delay as well as the order dismissing the said appeal itself. The Writ Petition also sought quashing of the said notification in the Official Gazette dated 1st January, 2004. The said Writ Petition was therefore filed under Article 226 as well as Article 227 of the Constitution of India. An order in Writ Petition

under Article 226 of the Constitution of India is appealable under clause 15 of the Letters Patent. Hence, this appeal.

5. The essence of the entire litigation is required to be seen. The notification in the Official Gazette is dated 1st January, 2004. That can be and is challenged by way of appeal before the tribunal established under the said Act. The said notification could not have been challenged directly in a Writ Petition filed under Article 226 of the Constitution of India in view of the said equally efficacious alternative remedy of appeal provided under the said statute. The order in any writ Petition to be filed would necessarily challenge the order of the appellate authority since the appeal proceedings are mandatorily required to be resorted to before filing any writ petition for challenging the notification. Any order in appeal to be challenged in a Writ Petition is therefore, an order of the appellate authority under the said Act.

6. That appellate authority has been held to be a tribunal exercising quasi judicial powers under the said Act.

7. In the case of **Bhikaji Tukaram Jadhav vs State of Maharashtra reported in 2002 (5) BCR 83-86** such a tribunal is held to be subject to the supervisory jurisdiction under Article 227 of the Constitution of India. Orders of such a tribunal cannot therefore, be challenged under Article 226 of the Constitution of India, no matter what is the order or phraseology of the petition or the prayers therein.

8. In fact, it is argued on behalf of the respondents that if the notification itself were to be challenged under Article 226 of the Constitution of India, it would require to be filed before the Division Bench and not a Single Judge. Such a Writ Petition would not be entertained on account of availability of equally efficacious alternative remedy provided in the

said statute.

9. It is therefore, seen that the above Writ Petition is necessarily filed under Article 227 of the Constitution of India invoking the supervisory powers of this Court over the orders of the appellate tribunal under the said Act, the averments in the petition or title of the petition showing both the Articles of the Constitution notwithstanding.

10. It is argued on behalf of the petitioner that not only is the appeal filed before the tribunal challenging the notification but the Writ Petition also challenges the said notification as can be evinced from prayer (c) of the Writ Petition. For this purpose, a look at these proceedings is required.

11. In an appeal filed before the Slum Tribunal at Bombay challenging the notification in the official Gazette dated 1st November, 2004 an application for

condonation of delay was taken out. The delay was sought to be condoned on the ground that the appellant received knowledge of the application/notification on 7th June, 2006 and immediately preferred the appeal. The statement in paragraph 2 of the application shows that the declaration of the property as a slum on 19th December, 2003 came to be notified in the Official Gazette on 1st January, 2004.

12. The application prays for delay to be condoned and interim and ad interim reliefs to be granted with further and other reliefs and costs of the application. It is therefore seen that the essence of the application for condonation of delay is the knowledge of the declaration received by the appellant on 7th June, 2006.

13. The reply of the respondent to the said

application shows that the said statement is false. This is based upon the factum inter alia that the appellant had filed suits being Suit No. 5296 of 2005 and 5297 of 2005 in the Bombay City Civil Court in December, 2005 in which they had annexed an agreement between the applicant and the developers about the development of the property of the appellant specifically mentioning that it has been declared as a slum under the Maharashtra Government Gazette dated 1st January, 2004. The seminal case of the appellant of having acquired the knowledge in June, 2006 therefore falls to the ground. No appellant can base his claim even on the ground of sympathy upon a dishonest statement. The appellant's application therefore came to be rejected.

14. The order of rejection indeed sets out the averments and grievances of the appellant in the appeal memo. Nevertheless, it is only because the

application for condonation of delay was dismissed that " in consequence" the main appeal was stated to have been dismissed and " in consequence" a substitution application made by same parties also came to be dismissed and the ad interim relief granted stood vacated.

15. The appellant has challenged essentially the said order in the above Writ Petition. The Writ Petition shows a challenge to the said order of the Slum Tribunal in the said application taken out in the said M.A. and requires the Court to call for the records of the notification dated 1st January, 2004 itself.

16. The order passed in Writ Petition specifically mentions in para 2 that the petition is directed against the said order in the said M.A.application for condonation of delay filed in the said appeal on 18th August, 2006 which came to be rejected. The order therefore, specifies that the notification itself was not

challenged. A reading of the order shows that the merits of the notification were neither touched upon, nor argued. The order in the Writ Petition considers the case of the knowledge of the appellant received in June, 2006 and disbelieves the same on the ground of agreement entered in September, 2004 by the appellant as shown in suit No.5674 of 2005 to which the said agreement was annexed. It was only on that ground that the Writ Petition stood dismissed.

17. The appellant has not sought review of the Writ Petition on the ground that though challenged the Writ Petition has not dealt with the legality of the notification dated 1st January, 2004. In fact, the appellant has not filed any Writ Petition challenging the notification before the Division Bench of this Court as required. The order on the Writ Petition therefore, unmistakeably came to be passed under Article 227of the Constitution and no more. L.P.A. From an order under the said Article does not lie to this Court. The

appeal is therefore clearly not maintainable.

18. In the case of **Sushilabai Laxminarayan Mudliyar vs Nihalchand Waghajibhai Shaha reported in AIR 1992 SUPREME COURT 185** it has been held that the order under Article 226 of the Constitution is appealable by a Letters Patent Appeal to the same Court. However, it is to be seen that the order is necessarily passed under Article 226 of the Constitution which falls within the purview of the original jurisdiction of this Court. In this case, it is not so.

19. The consideration of the maintainability of the Letters Patent Appeal has been recently decided by the Supreme Court in the case of **Kishorilal vs Sales Officer, District Land Development Bank reported in (2006) 7 Supreme Court cases 496** . It has indeed been held that if the writ petition is filed under Article 226 and 227 of the Constitution, an LPA was maintainable. However, what has to be seen is whether

in terms the petition was filed under both these articles and it was not merely stated to have been so filed. This petition as aforesaid is not shown to have been filed under Article 226 and in any event relief under Article 226 has not been pressed.

20. Having seen that the appellant has filed the writ petition in this Court only under Article 227 an LPA is not maintainable. Consequently, appeal is dismissed in limine.

(Smt Roshan Dalvi, J) **(D.G.Deshpande,J)**